

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 17TH DAY OF APRIL 1998

BEFORE

THE HON'BLE MR.JUSTICE H.N. NARAYAN

CIVIL REVISION PETITION NO.297 OF 1998

Between

Sri Ananda Raj, s/o Joseph,
major, Proprietor of S.A.
Engineering Works, Sanjay
Colony, Bhadravathi.

..Petitioner

(By Sri Amaresh A.Angadi, Adv.)

And

Sri A.Crusoe Raj, s/o
C.Anrith Raj, aged about 55 years,
residing at DWC No.14-D, Hutha
Colony, Bhadravathi.

..Respondent

(By Sri S.V Tilgul, Adv.)

This petition is filed under Section 115 CPC against the order dt.25.1.1997 passed in Ex.No.152 of 1994 on the file of the Civil Judge and JMFC., Bhadravathi, dismissing I.A.1 filed under Section 60(1)(b) of CPC for seeking an order to release the attach movable properties.

This petition having been reserved, the Court made the following:

ORDER

The short question that arises for consideration in this revision is whether a Proprietor of an Engineering Works, who works with

lathes and other machines, is an artisan whose tools are not liable for attachment under Section 60(1)(b) CPC. This contention having been negatived by the Executing Court, the judgment debtor has filed this revision under Section 115 CPC questioning the correctness of the order of the trial Court.

2. The respondent herein obtained a money decree for recovery of a sum of Rs.10,000/- with interest and costs which was an ex parte decree. He sued out execution as the defendant failed to comply the decree. But the judgment debtor who entered appearance failed to file his objections. He has also failed to make payment in discharge of the decretal amount. Hence, an order of attachment of movables was ordered by the trial Court. The movables were in fact attached and were brought before the Court for further proceedings. It was at that stage that the judgment debtor filed an application under Section 60(1)(b) r/w O.21 R.58 and Ss.47 and 151 CPC seeking an order to release the attached movable properties claiming that they are tools of an artisan which were exempted from attachment.

3. Heard the learned counsel appearing on both sides. Both of them have relied upon the following decisions in support of their contentions:

(1) HARJIRAM VS. GHANSHYAM DAS (AIR 1972 Rajasthan, 62)

(2) T.R. PUNNAVANAM PILLAI VS. MUTHUSWAMI ACHARI (AIR 1962 Madras, 444)

(3) MANIKLAL UPADHYA VS. RAMESH CHANDRA ACHARYA (AIR 1955 Calcutta 290).

4. It is the contention of the learned counsel for the petitioner that the petitioner who is running an Engineering workshop with the help of lathe machine and other tools attached in this case are the tools of an artisan which are not liable for attachment under the provisions of S.60(1)(b) CPC. The learned counsel for the respondent however sought to rely on the decision given by Allahabad High Court in BINDESHARI VS. BANSHI LAL(54, Allahabad, 399) which is in the judicial dictionary and according to him, the proprietor who runs an industry, even if it is a small scale engaging

other mechanics and skilled workers, is not an artisan even though the machinery with which he carries on his work, may be described or defined as tools. Therefore, the machineries attached from the custody of the petitioner are not the "tools of an artisan".

5. Therefore, the Court has to consider whether the articles attached are tools and whether they are the tools of an artisan. In order to understand the meaning of these two words and the context in which this exemption is introduced in the CPC has to be carefully looked into. The category of property exempted from attachment under S.60(1)(b) are as follows:

"tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry, and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been

declared to be free from liability under the provisions of the next following section."

Tools of an artisan is not defined in the CPC. Therefore, one has to find the meaning in the dictionary.

6. The Calcutta High Court in MANIKLAL UPADHYA's case has extracted the definition of an artisan from two judgments, one from Punjab and another from Calcutta, wherein the word "artisan" is stated to mean an artificer and as such is a person who makes something as distinguished from one who does something. It is also used often in synonymous with a mechanic, who is a person who has such special knowledge of the mechanism as to enable him to operate it and to set it right when it goes wrong. In the sense, the word "artisan" in Art.7 of the Limitation Act includes mechanic. The Calcutta High Court has ruled out the driver of a motor car as a mechanic even though he may happen to be a mechanic. The Madras High Court in series of decisions defined the word "artisan" in the following words:

"The connotation of the term "artisan" occurring in S.60(1) must be restricted to a handicrafts man or artificer who is employed in any of the industrial arts."

According to the Madras High Court, a goldsmith is an artisan because he is a handicrafts-man who is engaged in one of the industrial arts of trade and makes a living by selling articles which he makes.

The judicial dictionary has defined an "artificer" as a skilled workman. He must be a person who is to have the personal performance of some work for which he is paid wages and this must be with reference to the original contract or obligation. The terms, artificer, workmen and labourer, have reference only to those occupations in which manual labour is an essential element, and they do not apply to contracts to server as an actor in a theatrical company.

Wharton's Law Lexicon, 1976 Reprint Edition has attempted to give the meaning of an "artificer" as a person who are masters of their art, and whose employment consists chiefly in manual labour.

In BINDESHARI VS. BANSHI LAL (54, Allahabad, 399) "artisan" means one who practices or cultivates an art; an artist; though in common parlance the word is taken to mean handicraftsman. Probably, a synonym for artificer.

The English - Kannada Dictionary published by the University of Mysore has given the following in Kannada equivalent to artisan.

“ ಶೈಲಕಾರ;
ಶೈಲಕಾರ;
ಕಸಬುಕಾರ;
ಗಿರೋಕಾರ;
ಶೈಲಕಾರ; ಶೈಲಕಾರ.”

7. A careful understanding of these definitions of the word "artisan" may include a carpenter, a tailor, a barber, goldsmith, blacksmith, weaver and all other craftsmen who carry on his work investing

his human labour. The exemption of attachment of tools of such persons was introduced having regard to the status of these persons of the society. It is a matter of public policy not to stop the work of such craftsmen by attaching their tools.

8. A careful perusal of the meaning assigned to tools in English dictionaries show that there is an attempt to include even the machines also, used by such craftsmen. It is no doubt true that in modern days a craftsman often uses a machine instead of old implements or tools for his work. But the whole thing will have to be incorporated having regard to the purport and object of giving exemption to such persons. Unfortunately, I have not been able to come across any material disclosing the purport of Legislation to introduce this exemption. If one peruse the provisions of S.60(1) and the number of persons exempted from attachment of their tools clearly shows that the Legislature identify certain persons from the lower status of society. If we analyse the definition of tools of an artisan in this background, a person who is running a smallscale industry cannot be

termed an as artisan and the tools he uses as the tools of an artisan. If that is so, then every mechanic who runs small scale industry claims exemption under this Section. In my considered opinion such persons who invests thousands of rupees in their business cannot be considered as artisans. Here is a person who has borrowed a huge sum of Rs.10,000/- for his person and running the small scale industry engaging a few skilled labourers, claims exemption under Section 60(1)(b) when his machines were attached and brought before the Court. The exemption does not mean to avoid payment of decretal amount. Therefore, the learned Munsiff has in fact correctly analysed the tools of an artisan and has rightly rejected the exemption claimed by the judgment debtor. I find no error of jurisdiction in his order.

9. The Rajasthan High Court in HARJIRAM VS. GHANSHYAM DAS (AIR 1972 Rajasthan, 62), relying upon the definition of tool given in the Imperial Dictionary of the English Language (1969) and the Oxford English Dictionary (1933) Vol.XI, held as follows:

"According to the dictionary meaning, "tool" will include a mechanised implement as a lathe machine. As a mechanic, the judgment-debtor has to undertake numerous types of repairs. For some repairs, he has to work on the drilling machine. If some parts are broken, a welding machine has to be brought into use. It cannot, therefore, be said that the machines like lathe machine, drilling machine or a welding machine are not needed by a mechanic to undertake repairs of the Motor Vehicles or machines like a chaff cutting machine or a tractor. Section 60(1) (b) reproduced above enacts that "tools of artisan" shall not be liable to attachment. It does not say that only such tools shall not be liable to attachment as are necessary for the mere maintenance of the artisan. An artisan may be carrying on his trade on a small scale or he may be doing so on a large scale. All the tools that are required to carry on

his trade as an artisan are covered by the provisions of Section 60 (1)(b) Civil Procedure Code. I see no reason for holding that clause (b) of the proviso to Section 60 Civil Procedure Code applies only to the case of very small artisans and not to the case of an artisan working on a large scale. There is nothing to indicate that the clause is limited to artisans working on a small scale. There will be a further difficulty if I were to hold that the clause was limited to such artisans only then there would be no criterion for determining as to who is a big artisan. The tools of an artisan may be petty or may be costly. They may be ordinary or they may be complicated. If the tools are necessary for carrying on the trade of an artisan, they will be tools irrespective of the fact that they are mechanical and of a complicated character. The courts below said that the three machines under attach-

ment are operated by electric energy. In my opinion, it does not make any difference. In the present advancement of science, electric energy is availed of to carry on even small industries. If, therefore, a mechanic, who has a workshop and undertakes repairs of motor vehicles and makes use of machines which are run by electricity, it cannot be said that he is not an artisan and the machines that he is making use of to undertake the repairs are not tools of artisan. I have already noticed above that Section 60 (1) (b) does not give any indication to restrict the meaning of the word "tools" to ordinary tools."

With respect to His Lordship's opinion in the said case, it is difficult to accept the said opinion as in my opinion expansion of the meaning of the words "artisan" and "tools" of an artisan

would create anamoly and the purpose of giving such exemption would defeat the very purpose of the Legislation.

In the light of the above discussion, I find no merit in this revision and the revision is dismissed.

Sd/-
JUDGE

Ksj/-